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Dig., §§ 796-798; Dec. Dig., § 271.\* 6 Va.-W. Va. Enc. Dig. 502; 6 Va.-W. Va. Enc. Dig. 667.]

**4. Fraudulent Conveyances (§ 271\*)—Evidence—Burden of Proof.**—Where a conveyance is attacked as fraudulent, the burden is upon the plaintiff, but, having established a prima facie case of fraud, the burden shifts, and the defendant must establish the bona fides of the transaction.

[Ed. Note.—For other cases, see Fraudulent Conveyances, Cent. Dig., §§ 796-798; Dec. Dig., § 271.\* 6 Va.-W. Va. Enc. Dig. 505; 6 Va.-W. Va. Enc. Dig. 660.]

**5. Fraudulent Conveyances (§ 300\*)—Consideration—Recitals in Deed.**—In a suit by creditors to set aside a conveyance as voluntary and fraudulent, recitals in the deed that the consideration has been paid are not sufficient to establish that fact.

[Ed. Note.—For other cases, see Fraudulent Conveyances, Cent. Dig., § 987; Dec. Dig., § 300.\* 6 Va.-W. Va. Enc. Dig. 502; 6 Va.-W. Va. Enc. Dig. 659.]

**6. Fraudulent Conveyances (§ 282\*)—Evidence—Sufficiency—Knowledge of Grantee.**—In a suit by creditors to set aside a deed as fraudulent, evidence held insufficient to show that the grantee was party to the fraudulent intent of the grantor.

[Ed. Note.—For other cases, see Fraudulent Conveyances, Cent. Dig., §§ 817, 818; Dec. Dig., § 282.\* 6 Va.-W. Va. Enc. Dig. 563, 660.]

**7. Deeds (§ 200\*)—Delivery—Evidence.**—While a deed is presumed to have been delivered at the time of its date or acknowledgment, the actual time of delivery may be shown.

[Ed. Note.—For other cases, see Deeds, Cent. Dig., § 601; Dec. Dig., § 200.\* 4 Va.-W. Va. Enc. Dig. 406.]

Appeal from Circuit Court, Russell County.

Suit by James H. Shoemaker against John Shoemaker and others for partition. Upon the petition of the Chapman Drug Company and others a deed from Isaac Shoemaker to his son Bona Shoemaker was set aside, and Bona Shoemaker appeals. Reversed.

*Routh & Routh*, for appellant.

*S. B. Quillen, Finney & Wilson*, and *Burns & Kelly*, for appellees.

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JOHNSON et al. v. McCoy.

Sept. 14, 1911.

[72 S. E. 123.]

**1. Ejectment (§ 15\*)—Title to Support Action—Claim from Common Source.**—Where both parties in ejectment claim title from a

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\*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes

common source, plaintiff need not prove his title beyond the common grantor.

[Ed. Note.—For other cases, see Ejectment, Cent. Dig., §§ 59-62; Dec. Dig., § 15.\* 4 Va.-W. Va. Enc. Dig. 882.]

**2. Lost Instruments (§ 23\*)—Evidence—Sufficiency.**—One claiming title under a lost or destroyed document must prove its former existence, contents, and loss or destruction by strong and conclusive parol evidence.

[Ed. Note.—For other cases, see Lost Instruments, Cent. Dig., §§ 51-57; Dec. Dig., § 23.\* 4 Va.-W. Va. Enc. Dig. 880; 9 Va.-W. Va. Enc. Dig. 479.]

**3. Deeds (§ 90\*)—Construction.**—In construing a deed, the court should place itself in the position of the parties when it was executed, and read it as a whole.

[Ed. Note.—For other cases, see Deeds, Cent. Dig., §§ 234-248; Dec. Dig., § 90.\* 4 Va.-W. Va. Enc. Dig. 421.]

**4. Deeds (§ 93\*)—Construction—Intention of Parties.**—The intention of the parties to a deed, as shown by the instrument, prevails, unless contrary to a rule of law.

[Ed. Note.—For other cases, see Deeds, Cent. Dig., §§ 231, 232; Dec. Dig., § 93.\* 4 Va.-W. Va. Enc. Dig. 419.]

**5. Deeds (§ 100\*)—Construction—Surrounding Circumstances.**—The circumstances surrounding the execution of a deed may be considered in determining the intention of the parties.

[Ed. Note.—For other cases, see Deeds, Cent. Dig., § 239; Dec. Dig., § 100.\* 4 Va.-W. Va. Enc. Dig. 425.]

**6. Deeds (§ 26\*)—Construction—Grammatical Errors.**—As a rule, bad grammar will not vitiate a deed, where the meaning of the parties is clear.

[Ed. Note.—For other cases, see Deeds, Cent. Dig., §§ 50-52; Dec. Dig., § 26.\* 4 Va.-W. Va. Enc. Dig. 426.]

**7. Deeds (§ 95\*)—Construction—Punctuation.**—If the true meaning of the deed is apparent from its language, its meaning will not be changed by punctuation.

[Ed. Note.—For other cases, see Deeds, Cent. Dig., §§ 238-254; Dec. Dig., § 95.\* 4 Va.-W. Va. Enc. Dig. 425.]

**8. Deeds (§ 97\*)—Construction.**—Where a deed is inartificially drawn and contains no formal parts or clauses, technical rules of construction applicable to repugnant stipulations should not be applied.

[Ed. Note.—For other cases, see Deeds, Cent. Dig., §§ 267-273, 434-447; Dec. Dig., § 97.\* 4 Va.-W. Va. Enc. Dig. 422.]

**9. Deeds (§ 129\*)—Construction—Estate Conveyed—Life Estate.**—A deed recited that it was between the heirs of S of the first part

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\*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

and M. of the second part, and that for the consideration of each of one part of the estate of S. the party of the first part granted unto the party of the second part the described tract of land, "with covenants of general warranty, unto the said M. during her lifetime, then at her decease to" her son. M. was S.'s widow, and when the deed was executed, she and her son named in the deed were living together on the tract, and all of the other heirs had by deed of partition received their share of S.'s land, so that, unless the son named took a remainder under the deed, he would receive none of his father's estate. Held, that M. took a life estate in the land, with remainder to the son named in fee.

[Ed. Note.—For other cases, see Deeds, Cent. Dig., §§ 360-365, 416-435; Dec. Dig., § 129.\* 4 Va.-W. Va. Enc. Dig. 437.]

Error to Circuit Court, Buchanan County.

Action by John C. McCoy against P. L. Johnson and another, committee for Samuel M. Smith. Judgment for plaintiff, and defendants bring error. Reversed and remanded for new trial.

*Greever & Gillispie* and *M. O. Lits*, for plaintiffs in error.

*Chase & Daugherty* and *S. M. Coulling*, for defendant in error.

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ROANOKE RY. & ELECTRIC CO. v. CARROLL.

Sept. 14, 1911.

[72 S. E. 125.]

**1. Street Railroads (§ 93\*)—Injuries to Persons on Track—Duty on Seeing Persons on Track.**—A motorman is not obliged to stop his car merely because he sees a pedestrian approaching the track, as it is reasonable to assume that he will stop and wait for the car to pass, and not attempt to cross immediately in front of it.

[Ed. Note.—For other cases, see Street Railroads, Cent. Dig., §§ 195-200, 203; Dec. Dig., § 93.\* 12 Va.-W. Va. Enc. Dig. 845; 4 Va.-W. Va. Enc. Dig. 140.]

**2. Negligence (§ 83\*)—"Last Clear Chance."**—The doctrine of the last clear chance rests upon the principle that there is something in the plaintiff's condition or situation to admonish the defendant that he is not able to protect himself. It is the doctrine of prior and subsequent negligence, or remote and proximate cause, and presupposes the intervention of an appreciable interval of time between the prior negligence of the plaintiff and the subsequent negligence of the defendant. It applies notwithstanding the contributory negligence of the plaintiff when the defendant knows, or by the exercise of ordinary care ought to know, of plaintiff's danger, and

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\*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.